

1 THE HONORABLE JOHN C. COUGHENOUR  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

8 JAMES HEALY, on behalf of himself and all  
9 others similarly situated,

10 Plaintiff,

11 vs.

12 MILLIMAN, INC., d/b/a INTELLISCIPT,

13 Defendant.

14  
15 Case No. 2:20-cv-01473-JCC

**STIPULATED MOTION AND [PROPOSED]  
ORDER TO STAY PROCEEDINGS  
PENDING APPEAL**

**NOTE ON MOTION CALENDAR:**  
16 APRIL 16, 2024

17 The parties respectfully submit this joint request that the Court enter an order to stay  
18 proceedings pending the resolution of Plaintiff's Petition Seeking Permission to Appeal, which  
19 Plaintiff will file on April 19, 2024, and the Ninth Circuit's acceptance of review and any decision  
20 on appeal. In support of this stipulated motion, the parties state:

21 1. Plaintiff filed this class action lawsuit on October 5, 2020.

22 3. On April 29, 2022, the Court granted in part and denied in part Plaintiff's motion  
23 for class certification, certifying two classes, including the inaccuracy class. Dkt. No. 126.

24 4. After the classes were certified but before notice was sent, Plaintiff conducted  
25 additional discovery regarding whether inaccuracy class members had suffered an injury for  
26 purposes of Article III standing.

27 5. On September 8, 2023, Plaintiff moved to modify the class definition based on  
the evidence he had developed. Dkt. 166.

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1       6.     On September 21, 2023, Milliman filed a Motion for Partial Summary  
2 Judgment/Motion to Decertify Inaccuracy Class. Dkt. 167.

3       7.     The Court held oral argument on Plaintiff's Motion to Modify the Class Definition  
4 and Defendant's Motion for Partial Summary Judgment/Motion to Decertify Inaccuracy Class.  
5 Dkt. 197.

6       8.     Following oral argument, the Court ordered the parties to submit supplemental  
7 briefing regarding class-wide standing for both the inaccuracy and reinvestigation classes. Dkt.  
8 198. The parties timely filed their briefs as the Court ordered. *See* Dkt. Nos. 203-214.

9       9.     On February 22, 2024, the Court entered an Order granting in part and denying  
10 in part Defendant's motion for summary judgment and/or to decertify the inaccuracy class,  
11 dismissing the class for lack of class-wide standing. Dkt. 216 at 6:20-25. In the Order, the Court  
12 directed the parties to meet and confer and provide the Court with a joint status report  
13 containing a proposed revised case management schedule within fourteen days of the Order.

14       10.    The parties met and conferred on March 1, 2024, during which, Plaintiff's  
15 counsel informed Milliman's counsel that Plaintiff intended to file a motion for reconsideration  
16 and clarification of the Court's order. On March 5, 2024, the parties filed a stipulated motion to  
17 extend the deadline to submit a joint status report until after the motion for reconsideration  
18 and clarification had been resolved, which the Court granted. Dkts. 217, 218.

19       11.    On April 9, 2024, the Court entered an Order that:

20           CLARIFIES: its dismissal of the inaccuracy class is pursuant to Rule  
21 56. Further, this is a dismissal *without* prejudice. And for the  
22 reasons described in Plaintiff's motion for reconsideration, (*see id.*  
at 9), the Court CERTIFIES that an interlocutory appeal of this issue  
is appropriate under 28 U.S.C. § 1292(b).

23 *See* Dkt. 227 (in relevant part).

24       12.    Section 1292(b), which relates to interlocutory appeals, provides that  
25 "application for an appeal hereunder shall not stay proceedings in the district court unless the  
26 district judge or the Court of Appeals...shall so order."

27  
STIPULATED MOTION AND [PROPOSED] ORDER TO  
STAY PROCEEDINGS PENDING APPEAL - 2  
Case No. 2:20-cv-01473-JCC  
7881970.1

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1       13. While the filing of an interlocutory appeal does not automatically stay  
 2 proceedings in the district court, the district court has broad discretion to decide whether a stay  
 3 is appropriate to “promote economy of time and effort for itself, for counsel, and for litigants.”  
 4 *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972) (quotations and citations omitted); *see*  
 5 *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (“The District Court has broad discretion to stay  
 6 proceedings as an incident to its power to control its own docket.”). “A trial court may, with  
 7 propriety, find it is efficient for its own docket and the fairest course for the parties to enter a  
 8 stay of an action before it, pending resolution of independent proceedings which bear upon the  
 9 case.” *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983)  
 10 (citation omitted); *see also Deming v. First Franklin*, No. 09-5418RJB, 2010 WL 2326170, at \*1  
 11 (W.D. Wash. June 7, 2010) (granting stay of proceedings pending 28 U.S.C. § 1292(b)  
 12 interlocutory appeal based on efficiency and economy of judicial resources); *Hill v. Glebe*, No.  
 13 14-5330 RJB-JCC, 2015 WL 1538771, at \*2 (W.D. Wash. Apr. 7, 2015) (finding the same).

14       14. Here, the parties agree that a stay of the entire matter pending the Ninth  
 15 Circuit’s acceptance of review and any decision on appeal could serve the interests of fairness  
 16 and “promote economy of time and effort” for the Court and the parties. *Kelleher*, 467 F.2d at  
 17 244. In that regard, Milliman agrees to the proposed stay for the sole purpose of avoiding the  
 18 expenditure of additional litigation costs. Milliman does not agree with or support Plaintiff’s  
 19 intention to appeal the Court’s Order.

20       15. The parties propose that they meet and confer and provide the Court with a joint  
 21 status report either within seven days after the Ninth Circuit’s acceptance of review and any  
 22 decision on appeal, or after the Ninth Circuit has declined interlocutory review.

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STIPULATED MOTION AND [PROPOSED] ORDER TO  
 STAY PROCEEDINGS PENDING APPEAL - 3

Case No. 2:20-cv-01473-JCC  
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1 STIPULATED TO AND DATED this 16th day of April, 2024.

2 TERRELL MARSHALL LAW GROUP PLLC

WILLIAMS, KASTNER & GIBBS PLLC

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20 STIPULATED MOTION AND [PROPOSED] ORDER TO  
21 STAY PROCEEDINGS PENDING APPEAL - 4

22 Case No. 2:20-cv-01473-JCC  
23 7881970.1

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1 ORDER  
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5 IT IS SO ORDERED.  
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8 DATED this 16th day of April 2024.  
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THE HONORABLE JOHN C. COUGHENOUR

STIPULATED MOTION AND [PROPOSED] ORDER TO  
STAY PROCEEDINGS PENDING APPEAL - 5  
Case No. 2:20-cv-01473-JCC  
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